**AKBERDIN HJ ABDUL KADER & ANOR**

**v.**

**MAJLIS PEGUAM MALAYSIA**

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
ABDUL KADIR SULAIMAN JCA
ALAUDDIN MOHD SHERIFF JCA
[CIVIL APPEAL NO: W-04-135-2001]
8 NOVEMBER 2002

***LEGAL PROFESSION:*** *Admission - Pupillage - Whether pupil served period of pupillage with a qualified master - Whether master had seven years' active practice as required under s. 13(1) Legal Profession Act 1976 - Whether master's six years' service as magistrate could be taken into account for computing seven-year requirement - Whether "active practice" to include only seven years' practice as advocate and solicitor*

***STATUTORY INTERPRETATION:*** *Construction of statutes - Purposive approach preferred - Interpretation of s. 13(1) Legal Profession Act 1976 - Requirement of seven years' active practice to qualify as pupil master - Whether active practice to include only practice as advocate and solicitor - Whether tenure as magistrate can be taken into account for computing seven-year requirement*

***WORDS AND PHRASES:*** *"active practice" - Section 13(1) Legal Profession Act 1976 - Interpretation - Whether tenure as magistrate is "active practice" within s. 13(1)*

This appeal concerned the interpretation of s. 13(1) of the Legal Profession Act 1976 ('the Act') and whether the first appellant was qualified as a master to take on the second appellant as a pupil. The reason being whether the first appellant's six years' service as a magistrate could be taken into account for computing seven years' active practice as required under s. 13(1) of the Act.

**Held:**
**Per Gopal Sri Ram JCA**

**[1]** The approach to the interpretation of the Act should be purposive. The purpose of the Act is to protect the public from incompetent members of the legal profession. Once it is accepted that the Act is there to protect

the public, a literal interpretation to s. 13(1) would defeat the intention of Parliament. Further, the modern approach to statutory interpretation is purposive and not literal. (p 692 h-i)

**[2]** The phrase "active practice" in s. 13(1) of the Act refers to a total period of seven years from the date of an advocate and solicitor's admission and enrolment to the date upon which he is qualified to take on pupils, that is at the end of seven years from the date of his admission and enrolment. On the facts, the first appellant did not satisfy the test. (p 693 d-e)

*[Appeal dismissed.]*

*[**Bahasa Malaysia** Translation Of Headnotes*

Rayuan ini berkaitan dengan tafsiran s. 13(1) Akta Profesyen Undang-Undang 1976 ('Akta') dan sama ada perayu pertama berkelayakan sebagai guru pelatih untuk mengambil perayu kedua sebagai pelatih. Ini adalah kerana sama ada perkhidmatan perayu pertama sebagai majistret selama enam tahun boleh diambilkira dalam penghitungan tujuh tahun "active practice" yang diperlukan di bawah s. 13(1) Akta.

**Diputuskan:**
**Oleh Gopal Sri Ram HMR**

**[1]** Pendekatan ke arah tafsiran Akta semestinya purposif. Tujuan Akta adalah untuk melindungi orang awam daripada ahli-ahli profesyen undang-undang yang tidak berkelayakkan. Sekali diterima bahawa Akta tersebut adalah untuk melindungi orang awam, satu tafsiran harafiah akan mengalahkan tujuan Parlimen memperbuat Akta tersebut. Justeru, pendekatan moden tafsiran statut adalah purposif dan bukan harafiah.

**[2]** Phrasa "active practice" dalam s. 13(1) Akta merujuk kepada keseluruhan masa tujuh tahun iaitu dari tarikh penerimaan dan kemasukkan seorang peguambela dan peguamcara sehingga tarikh ia berkelayakkan mengambil pelatih-pelatih, iaitu akhirnya tujuh tahun tersebut. Atas fakta kes ini, perayu pertama tidak memuaskan ujian ini.

*Rayuan ditolak.]*

**Case(s) referred to:**
*Pepper v. Hart [1993] 1 All ER 42* ***(refd)***
*Samantha Murthi v. Attorney-General, Malaysia & Ors [1982] CLJ 241; [1982] CLJ (Rep) 213* ***(refd)***

**Legislation referred to:**
Legal Profession Act 1976, ss. 3, 13(1)

*For the appellants - KK Wong; M/s Akberdin & Co*
*For the respondent - Hj Sulaiman Abdullah; M/s Zain & Co*

*[Appeal from High Court, Kuala Lumpur; Originating Summons No: R1-17-01]*

*Reported by Usha Thiagarajah*

## JUDGMENT
## (Oral)

**Gopal Sri Ram JCA (delivering the judgment of the court):**
This is the judgment of the court.

This appeal raises a short issue of statutory construction. The provision in question is s. 13(1) of the Legal Profession Act 1976 ("the Act"). That section reads as follows:

> Subject to subsection (4) a pupil shall serve his period of pupillage with an advocate and solicitor who is and has been in active practice in Malaysia for a total period of not less than seven years immediately preceding the date of commencement of his pupillage.
>
> Provided that the Bar Council may on special grounds allow a pupil to serve his period of pupillage with an advocate and solicitor of less than seven years' standing.

The factual background against which the interpretive question arises may be shortly stated.

Encik Akberdin is an advocate and solicitor of these courts. He was called to the Bar on 1 March 1991. Soon after that he joined the Judicial and Legal Service. He was a magistrate. He served as a magistrate in Kuala Lumpur for six years. Thereafter he resigned and returned to private practice.

Cik Faradinah binti Abu Bakar is a graduate of the International Islamic University. She obtained her degree in 1998. She wished to practice law. She went to Encik Akberdin's chambers. He took her on as his pupil. In due course she completed the formalities. At the end of the first statutory period, she obtained an order permitting her to appear before the subordinate courts and in the chambers of a judge. The profession calls this a "short call". Eventually

her petition to be admitted to the Bar was heard. She was admitted as an advocate and solicitor. After the date of admission, the Bar Council realised that Encik Akberdin was not qualified to take on a pupil. Both Encik Akberdin and his pupil wanted to have their position declared as being legal that is to say, as being within the law. So, they instituted proceedings in the High Court at Kuala Lumpur asking for several declarations. The main thrust of these declarations was that Encik Akberdin was in the words of the statute, "in active practice" for the required period, namely seven years from the date of his call to the Bar. If he was right in that assertion, then Cik Faradinah was properly called to the Bar. The application for declarations came before the learned judge of the High Court who in a very careful judgment examined the contentions advanced on behalf of the plaintiffs (the appellants before us). We will mention these contentions briefly. They were repeated before us. This is how the plaintiffs' counsel, Mr. K.K Wong, put his case.

The Act is constructed in such a fashion that it draws a distinction between three separate and distinct categories. First, an advocate and solicitor is defined in s. 3 of the Act. Next, there is s. 13(1) which employs the phrase "advocate and solicitor who is and has been in active practice". Thirdly, s. 13(3)(d) of the Act uses the expression "engaged in active practice as a legal practitioner". Mr. Wong's argument is that these three expressions mean different things. In support of his argument he has referred us to and relied on the judgment of Suffian LP in *Samantha Murthi v. Attorney-General, Malaysia & Ors* [1982] CLJ 241; [1982] CLJ (Rep) 213. In that case, the Federal Court when dealing with the definition of an advocate and solicitor under s. 3, held that an advocate of the Bar of the State of Sarawak could be a pupil master or "an advocate" for the purposes of the Act. While we entirely agree with that decision – indeed it is binding on us – we find its relevance to the present case a little dubious.

It is to be immediately appreciated that the foundation of Mr. Wong's argument is the literal approach. He says that when the section, that is to say s. 13, is interpreted literally, then Encik Akberdin is qualified to act as a pupil master because his active practice should include the six years he was a magistrate. The learned judge rejected that contention. We agree with him and we would do likewise.

In our judgment the approach to interpretation of the Act should be purposive. Indeed Mr. Wong readily conceded in his argument before us yesterday that the purpose of the Act is to protect the public from incompetent members of the legal profession. Once it is accepted that the Act is there to protect the public, then we cannot in the present case accede to the invitation to apply a literal interpretation to s. 13(1) because that would defeat the intention of Parliament.

Additionally, we observe that the modern approach to statutory interpretation is purposive not literal. Indeed the abandonment of the literal approach these days is evidenced by the speech of Lord Griffiths in *Pepper v. Hart* [1993] 1 All ER 42. This is what his Lordship said at p. 50 of the report:

> The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted.

Although the learned judge did not say so in so many words, he did in fact apply a purposive construction to the language of s. 13(1). He therefore adopted the correct approach and, as we have earlier said, we are in agreement with him on his conclusion.

To make the matter clear beyond doubt, we would say this. The phrase "active practice" in s. 13(1) refers to a total period of seven years from the date of an advocate and solicitor's admission and enrolment to the date upon which he is qualified to take on pupils, that is at the end of seven years from the date of his admission and enrolment. On the facts Encik Akberdin does not satisfy the test.

For the reasons already given, this appeal fails.